

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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THOMAS GESUALDI, LOUIS BISIGNANO,  
ANTHONY PIROZZI, DOMINICK MARROCCO,  
ANTHONY D'AQUILA, FRANK FINKEL,  
JOSEPH FERRARA, SR., MARC HERBST,  
THOMAS PIALI and DENISE RICHARDSON,  
as Trustees and Fiduciaries of the Local 282  
Welfare, Pension, Annuity, Job Training, and  
Vacation and Sick Leave Trust Funds,

**ORDER**

09 CV 565 (SLT)(RML)

Plaintiffs,

- against -

ANDREWS TRUCKING CORP.,

Defendant.

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**TOWNES, United States District Judge:**

On February 2, 2009, Plaintiffs initiated this action under § 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, alleging that Defendant failed to submit remittance reports and pay all required contributions on behalf of its employees, reported certain employee hours inaccurately, and permanently ceased all contributions to the pension fund in October 2007. Compl. ¶¶ 26, 34-40, 48-62. On July 7, 2009, Plaintiffs filed a motion for default judgment. By an order dated December 16, 2009, this Court referred Plaintiffs' motion to the Honorable Robert M. Levy, United States Magistrate Judge, for a Report and Recommendation ("R&R").

On March 22, 2010, Judge Levy issued his first R&R, recommending that Plaintiffs' motion for default judgment be granted. Judge Levy also recommend that Plaintiffs be awarded (a) \$775,290.88 in unpaid contributions; (b) \$457,887.42 in interest and liquidated damages on the unpaid contributions; (c) additional interest and liquidated damages in the amount of

\$793.66 per day from June 1, 2009 to the date of entry of judgment; (d) withdrawal liability of \$576,718.18; (e) interest on the withdrawal liability of \$21,283.11, with additional interest accruing at the rate of \$79.50 per day from June 1, 2008 to the date of entry of judgment; (f) \$115,343.64 in liquidated damages on the withdrawal liability; (g) \$1,569.50 in unearned benefits; (h) \$13,300 in legal fees; and (i) \$924 in costs. In the March 22, 2010 R&R, Judge Levy also recommended that Plaintiffs' request for audit fees be denied, with leave to submit supporting documentation within thirty (30) days.

On April 22, 2010, Plaintiffs submitted a declaration in support of their request for audit fees. The Court referred Plaintiffs' submission regarding audit fees to Judge Levy for a report and recommendation on April 28, 2010. Based on Plaintiffs' new submission, Judge Levy recommended that Plaintiffs be awarded \$13,382.50 in audit fees in a R&R dated May 14, 2010. In total, Judge Levy recommended that Plaintiffs be awarded \$1,975,699.23, plus interest in the amount of \$873.16 per day from June 1, 2009 to the date of entry of judgment.

Under 28 U.S.C. § 636(b)(1), a party may file written objections to a R&R within fourteen days of being served a copy of the R&R. As of the date of this order, the Court has not received any objections to either the March 22, 2010 or May 14, 2010 R&R. Accordingly, the Court has reviewed the R&Rs for clear error on the face of the record. *Accord Edwards v. Town of Huntington*, No. 05 Civ. 339 (NGG) (AKT), 2007 WL 2027913, at \*2 (E.D.N.Y. July 11, 2007); *McKoy v. Henderson*, No. 05 Civ. 1535 (DAB), 2007 WL 678727, at \*1 (S.D.N.Y. Mar. 5, 2007). The Court finds no clear error, and therefore adopts the R&Rs in their entireties as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1).

### ***CONCLUSION***

For the reasons stated above, Judge Levy's Reports and Recommendations dated March 22, 2010 and May 14, 2010 are adopted in their entireties. Plaintiffs' motion for default judgment is granted and they are hereby awarded \$1,975,699.23, plus interest in the amount of \$873.16 per day from June 1, 2009 to the date of entry of judgment.

SO ORDERED.

s/Hon. Sandra L. Townes  

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SANDRA L. TOWNES  
United States District Judge

Dated: June 3, 2010  
Brooklyn, New York